

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

BRIAN LEE MORGAN,
Defendant.

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CRIMINAL ACTION

No. 2:06-cr-0164

Order

AND NOW this 26th day of April, 2010, upon consideration of defendant Brian Lee Morgan's Motion to Recall the Mandate (Docket No. 40), his Motion to Have His Motion to Recall Mandate Recharacterized as a 2255 Motion (Docket No. 44), the government's response, and defendant's reply thereto, and having found that based on the record in this case the government failed to proffer sufficient evidence to support defendant's conviction and sentence under § 1028A(a)(1) in light of the Supreme Court's ruling in United States v. Flores-Figueroa, 129 S. Ct. 1886 (2009), decided after defendant's guilty plea and sentence, so that the conviction and sentence as to Count Nine must be vacated, **IT IS HEREBY ORDERED** that, within 20 days of the date of this Order, the parties shall submit supplemental briefs regarding the appropriate remedy as a result of this finding.

/s William H. Yohn, Jr., Judge
William H. Yohn Jr., Judge